

ORIGINAL

OPEN MEETING AGENDA ITEM



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John G. Gliege (#003644)

Attorney for PSWID, Fred B. Krafczyk, & Michael Greer

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2008 OCT 20 P 1:56

AZ CORP COMMISSION
DOCKET CONTROL

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BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION
OF PINE WATER COMPANY FOR
APPROVAL TO (1) ENCUMBER A PART
OF ITS PLANT AND SYSTEM PURSUANT
TO A.R.S. §40-285(A); AND (2) ISSUE
EVIDENCE OF INDEBTEDNESS
PURSUANT TO A.R.S. §40-302(A).

DOCKET NO. W-03512A-07-0362

NOTICE OF FILING LETTER FROM PINE
STRAWBERRY WATER IMPROVEMENT
DISTRICT

Pine Strawberry Water Improvement District, Fred B. Krafczyk, and Michael Greer hereby file the attached letter dated October 17, 2008 from counsel for the Pine Strawberry Water Improvement District to Bart Wilhoit. This letter is hereby filed in this docket to further update the Commission regarding the above referenced matter pursuant to the Procedural Order in this docket dated September 29, 2008.

RESPECTFULLY SUBMITTED this 17th day of October, 2008.

GLIEGE LAW OFFICES, PLLC

Arizona Corporation Commission

DOCKETED

OCT 20 2008

DOCKETED BY

John G. Gliege

1 Original and thirteen copies of the foregoing
2 Mailed this 17th day of October, 2008 to:

3 Docket Control Center
4 Arizona Corporation Commission
5 1200 W. Washington Street
6 Phoenix, AZ 85007

7 Copies of the foregoing
8 Mailed this 17th day of October, 2008 to:

9 Fennemore Craig, P.C.
10 Attn: Mr. Jay L. Shapiro
11 3003 North Central Ave. Ste 2600
12 Phoenix, AZ 85012-2913
13 Attorneys for Pine Water Company

14 Honorable Dwight D. Nodes
15 Assistant Chief Administrative Law Judge
16 Arizona Corporation Commission
17 1200 W. Washington Street
18 Phoenix, AZ 85007

19 Mr. Kevin Torrey, Esq.
20 Legal Division
21 Arizona Corporation Commission
22 1200 W. Washington Street
23 Phoenix, AZ 85007

24 RENSCH WALKER & HARPER, PC
25 Attn: Michael J. Harper
26 111 W. Cedar Lane, Ste C
27 Payson, AZ 85541
28 928-474-0322
29 Attorneys for Cindy Maack

Gliese Law Offices, PLLC

John G. Gliese

October 17, 2008

Bart Wilhoit
Fennemore Craig
3003 North Central Ave. Ste 2600
Phoenix, AZ 85012-2913

Re: Acquisition of Pine Water Company, Inc., and Strawberry Water Company, Inc.
Negotiations subject to *Arizona Rules of Evidence, Rule 408* and *Arizona Revised Statutes § 12-1116 (O)*

Dear Mr. Wilhoit:

This letter is being sent to you pursuant to *ER 4.2, Arizona Rules of Professional Conduct*, and *Rule 42 Rules of the Supreme Court of Arizona*, in your position as attorney of record for Pine Water Company, Inc., Strawberry Water Company, Inc. and Brooke Utilities, Inc. This office represents the Pine Strawberry Water Improvement District, an Arizona Municipal Corporation, which has adopted a resolution determining a public need and determining that it is in the public interest to acquire the used and useful plant, water system, business and assets of the Pine Water Company, Strawberry Water Company and those assets owned or claimed by Brooke Utilities, Inc. which are a part of the water systems serving properties located within the boundaries of the Pine Strawberry Water Improvement District {hereinafter the "District"} including but not limited to all water pipelines, easements, agreements to acquire water, well sharing agreements, water sharing agreements, pumps, wells, storage facilities, pressure tanks, water meters, valves, measuring devices, telemetry devices, Project Magnolia, any surface water rights or allocations of surface water, and other assets necessary to fully operate the Pine Water Company and the Strawberry Water Company. Further, the District has obtained information regarding recorded interests in property which are possessed by Pine Water Company, Strawberry Water Company and Brooke Utilities, and their predecessors in title. The Pine Strawberry Water Improvement District will want verification as to the status of each of these interests as well. But for the sake of this offer, the District is including all such property evidenced by recorded documents in the Office of the Gila County Recorder as a part of the property being sought by the District. One such recorded interest was large enough to have its own separate appraisal, the property located at 9 Pine Creek Canyon Drive, Pine, Arizona; the remainder of the real property interests are included within the valuation of the Water Systems set forth under the classification of *reconstructed cost new depreciated of the assets and facilities* set forth below.

The appraisal being sent with this letter is subject to the limitations caused by the extremely limited examination of the property which my clients were allowed to conduct and your client's lack of cooperation in providing financial data about the companies to my client for review and incorporation into the appraisal. Nevertheless, my clients did perform their examination of the property to the extent they were allowed and the result of that preliminary examination is reflected in the appraisals.

123 S. San Francisco Suite 9 Flagstaff, AZ 86001

Mailing: P.O. Box 1388 Flagstaff, AZ 86002

Phone: 928-226-8333; Cell: 928-380-0159 or 928-606-5260; Fax: 928-226-0339

E-mail: jgliese@earthlink.net

This letter is being sent pursuant to *Arizona Revised Statutes § 12-1116 A*. The appraisals of the property are attached. The Pine Strawberry Water Improvement District hereby offers to pay to your clients listed above, as their interests may appear, the total sum of **\$2,554,292.00**, as and for just compensation for the property or interests in the property to be acquired by the District. This offer is subject to any leases of record or any lessees who may claim a compensable interest, and subject to the claim of any other third party who may claim an interest in any of the assets being conveyed hereunder. This offer constitutes a single offer to purchase the assets herein described from the entities mentioned above and any unknown or undisclosed entities which may have an interest in any of this property. We ask that you please verify that none of the used or useful property is a lessee's interest, and if so, please provide the name of the lessor and the extent of the Lessor's interest.

The offer consists of the following:

- | | |
|---|-----------------------|
| 1. The reconstructed cost new depreciated of the assets and facilities: | \$1,986,000.00 |
| 2. The value of the businesses as "going concern." | \$ 498,292.00 |
| 3. The value of the interests in real estate being taken | <u>\$ 70,000.00</u> |
| 4. TOTAL VALUE | \$2,554,292.00 |

If it becomes necessary for the District to institute a condemnation action to acquire the property previously described, this will be done as a single action as is allowed by *Arizona Revised Statutes § 12-1118*. Further, both an application for immediate possession pursuant to *Arizona Revised Statutes § 12-1116* may be sought as well as a request for preference in scheduling the trial of this matter pursuant to *Arizona Revised Statutes § 12-1121*.

Pursuant to *Arizona Revised Statutes § 12-1115* the District reserves the right to enter onto the property of the Pine Water Company, Strawberry Water Company or Brooke Utilities, Inc. to conduct such examinations and surveys as may be necessary.

Rather than continue to posture to the detriment of both parties to this action, the District notes that it can have more money available to pay for the acquisition if it does not have to engage in the expenses of litigating this matter. To that end the District would also like your clients to consider the possibility of resolving this matter through a negotiated settlement. If your client would prefer to resolve this matter through an adversarial forum that is also available to the parties at a substantial cost to both. If your clients are inclined to look at a less costly resolution, if the parties are unable to reach an agreement among themselves, my clients would also be willing to attempt to resolve this matter through a mediation with a qualified mediator.

If these alternatives are not acceptable to you, be advised that the Pine Strawberry Water Improvement District is ready to commit the resources necessary to conclude this acquisition in their favor in the shortest time possible.

Mr. Hardcastle has, under oath, placed a value on the Pine and Strawberry Water Companies. Under oath, he affirmatively stated that Brooke Utilities would sell the stock of the companies for \$3,000,000.00. Clearly this identifies his position in this matter. Thus the parties are not very far

October 17, 2008

apart as far as value is concerned. It would appear that this matter should be ripe for a negotiated resolution.

This letter is being written to you as Settlement Negotiations and is subject to the provisions set forth in *Arizona Rules of Evidence Rule 408* and *Arizona Revised Statutes § 12-1116 (O)* and cannot be used as evidence in any proceeding pertaining to the issues set forth herein.

Pursuant to *Arizona Revised Statutes §12-1116* your client's response is requested within twenty (20) days of the date of this letter.

Should you have any questions, please contact me.

Sincerely,

GLIEGE LAW OFFICES P.L.L.C.



John G. Gliege